

REMARKS

Reconsideration is requested.

Claims 1 to 37 have been canceled, without prejudice. Claims 38 to 56 have been added and are pending. Support for the new claims 38 to 56 may be found in the originally-filed specification, including the originally-filed claims. No new matter has been added.

Entry of the attached Request for Continued Examination (RCE) is requested to assure entry of the present Amendment and a first non-final Action on the merits of the above amended claims, in the event the claims are rejected.

The claims have been amended to positively recite the inclusion of reagents and measuring steps to obviate the Examiner's concerns expressed on pages 3-4 of the Office Action dated February 27, 2003 (Paper No. 13) regarding the now-canceled claims 4-20. The Section 112, first paragraph, rejection of claims 4-20 is moot in view of the above. The Examiner's comment regarding an alleged necessary inclusion of "phage" is not understood and clarification of the same is requested in the event the Examiner maintains a rejection of the pending claims based on the same.

The pending claims are submitted to be supported by an adequate written description.

The formal objection of claim 4 on page 4 of Paper No. 13 is moot in view of the above amendments.

The Section 112, first paragraph, "new matter" rejection of claims 4-20 stated on pages 5-6 of Paper No. 13 is moot in view of the above.

The applicants respectfully submit that the presently claimed invention is described in the originally-filed claims and specification. Specifically, Claim 4 as filed provides basis for the last two phrases of claim 38 as amended relating to determination of susceptibility. The applicants respectfully submit that Claim 4 as filed indicates that the results from an incubated sample with reagent (step (ii)) are compared with the results from **one or both of** an incubated sample without reagent (step(iii)(a)) and a non-incubated sample without reagent (step(iii)(b)) to determine the susceptibility of the bacteria to the reagent. The ordinarily skilled person will appreciate that determining the susceptibility of the bacteria to the reagent means determining whether the bacteria are affected by the reagent.

Considering a comparison between step (ii) and step (iii)(a), the applicants respectfully submit that one of ordinary skill in the art would believe it implicit that by comparing the results from an incubated sample without the reagent (step (iii)(a)) with results from an incubated sample with the reagent (step (ii)), then one can determine whether the bacteria are affected by the reagent i.e. whether the bacteria are susceptible to the reagent. It would be further evident to the ordinarily skilled person and implicit in claim 4 as filed that the greater the difference in adenylate kinase content between the samples with and without the reagent, the greater the susceptibility of the bacteria to the reagent. If the bacteria is more susceptible to the reagent, then the cells grow to a lesser extent

and the adenylate kinase content of the lysed incubated sample with reagent is lower than the incubated sample without the reagent.

Similarly, considering a comparison between step (ii) and step (iii)(b), it would be clear to one of ordinary skill in the art and implicit in reading claim 4 as filed that by comparing the results from a non-incubated sample without reagent (step (iii)(b)) with results from an incubated sample with reagent (step (ii)), then one can determine whether the bacteria are affected by the reagent i.e. whether the bacteria are susceptible to the reagent. It would be further evident to the ordinarily skilled person and implicit in claim 4 as filed that the smaller the difference in adenylate kinase content between the non-incubated sample and the incubated sample with the reagent, then the greater the susceptibility of the bacteria to the reagent. If the bacteria is more susceptible to the reagent, then the cells grow to a lesser extent and the adenylate kinase content of the lysed, incubated sample is closer to that of the lysed, non-incubated sample than if the bacteria are less susceptible to the reagent.

The pending claims are submitted to be adequately described and enabled by the specification.

The Section 112, second paragraph, rejection of claims 4-20 is moot in view of the above. The amended claims are submitted to be definite. New claim 39 specifically provides for to inclusion of an optional third sample.

The objection to claim 14 stated in ¶18. on page 6 of Paper No. 13 is moot in view of the above.

In re Application of Murphy et al
Serial No. 09/600,398

The claims, as amended, are submitted to be in condition for allowance and a Notice to that effect is requested.

Return of an initialed copy of the PTO 1449 Form filed December 6, 2002, pursuant to MPEP § 609, is again requested.

Acknowledgement of the acceptability of the drawings in the Examiner's next Communication is again requested.

Acknowledgement of receipt of the certified copies of the priority documents and the applicants claim for priority in the Examiner's next Communication is requested. See, Notification of Acceptance dated August 2, 2000.

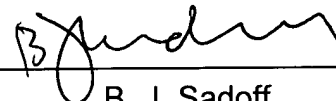
The claims are submitted to be in condition for allowance and a Notice to that effect is requested.

Should the Examiner believe that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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By: _____



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